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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,591	02/19/2002	Guy Itzkovitch	P 265363 Z-3017REG	2282
909	7590	11/09/2004	EXAMINER	
PILLSBURY WINTHROP, LLP P.O. BOX 10500 MCLEAN, VA 22102			BUI, LUAN KIM	
			ART UNIT	PAPER NUMBER
			3728	
DATE MAILED: 11/09/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/076,591

Applicant(s)

ITZKOVITCH, GUY

Examiner

Luan K Bui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,9,10 and 18-20 is/are rejected.
- 7) ☒ Claim(s) 2-8 and 11-17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Continued Prosecution Application

1. The Request for Continued Examination (RCE) filed on 10/12/2004 under 37 CFR 1.114 based on parent Application No. 10/076,591 is acceptable and a RCE has been established. An action on the RCE follows.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 9 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable Vasudeva (5,887,715) in view of Rysgaard et al. (6,193,062; hereinafter Rysgaard'062). Vasudeva discloses a tool container in the embodiment of Figures 7-8, comprising a case portion (1) having a storage space and a handle (2) and a cover portion (3, 46) pivotally attached to the case portion. The cover portion having an elongated storage space (41, 90) and a secondary cover portion (42) movably mounted with respect to the cover portion for covering the elongated storage space. Vasudeva also discloses the other limitations of the claims except for the elongated storage space being integrally formed with the cover portion and the handle being connected to the cover portion in lieu of the case portion. Rysgaard'062 shows a container (20) comprising a case portion (24) and a one-piece cover portion (25) having an elongated storage space integrally formed in the cover portion (Figure 1). It would have been obvious to one having ordinary skill in the art in view of Rysgaard'062 to modify the tool container of Vasudeva so the elongated

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storage space is integrally formed in the cover portion to reduce the cost of manufacture and because it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893). It also would have been obvious to one having ordinary skill in the art at the time the invention was made in view of Vasudeva to provide the handle in the cover portion to facilitate carrying the tool container and since the selection of the specific location for the handle such as connected to the cover portion as claimed or to the case portion of Vasudeva would have been an obvious matter of design choice inasmuch as the resultant structures will work equally well and inasmuch as applicant's specification does not state that using the specific location as claimed solves any particular problem or yields any unexpected results. The elongated storage space of Vasudeva is capable of holding a level and the weight of the secondary cover portion is tended to hold the secondary cover portion in its closed position.

4. Claims 10, 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Mitchell (4,058,210). Vasudeva further fails to show a level being disposed in the elongated storage space. Mitchell shows a tool case having a small compartment for holding a small level (99) (Figures 4-5). It would have been obvious to one having ordinary skill in the art at the time the invention was made in view of Mitchell to modify the tool container of Vasudeva so it includes a level disposed in the elongated storage space to provide more convenience for the user.

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Allowable Subject Matter

5. Claims 2-8 and 11-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to 10/12/2004 have been considered but are deemed to be moot in view of the new grounds of rejection.

It is well known in the art that the part is integrally formed or formed by many separate pieces is an obvious matter of design choice inasmuch as the resultant structures will work equally well.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (703) 305-5861. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to TC 3700 Customer Service at (703) 306-5648.

Any inquiry of a general nature or relating to the status of this application should be directed to the Customer Service whose telephone number is (703) 306-5648. Facsimile correspondence for this application should be sent to (703) 872-9306 for Formal papers and After Final communications.

lkb
November 5, 2004



Luan K. Bui
Primary Examiner